

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The Department counted the petitioner's own Social Security benefits, her new husband's Social Security and VA

benefits and concluded that together (after deductions) they had unearned income of \$2,153.04 per month. The Department also determined that the petitioner's husband had \$151.66 in earned income from which they deducted \$90 as a work expense deduction. The couple's countable earned and unearned income was determined to be \$2,214.64 per month. The Department determined that such an income was over the limits for both the Medicaid and VHAP medical insurance programs but did find the couple eligible for the V-script program. The petitioner was notified on August 13, 2001 that her husband had been denied Medicaid benefits and that she would be terminated from Medicaid beginning August 24, 2001 based on excess income.

3. The petitioner appealed the Medicaid termination for herself, the Medicaid denial for her husband and the VHAP denials for both based on her belief that the Department erred in including her husband's Veteran's Compensation benefits in the calculations. She provided verification, which the Department does not dispute, that her husband's VA disability benefits (VA Compensation) are "rated 60% service connected". She alleges that these benefits are not counted as income for tax purposes or "other benefits" and thus should not be counted for the Medicaid and VHAP programs.

ORDER

The decision of the Department of PATH is affirmed.

REASONS

The regulations governing both the Medicaid and VHAP programs require the inclusion of Compensation benefits from the VA as countable "unearned" income. The Medicaid program requires that "all earned and unearned income of the aged, blind or disabled applicant/recipient(s) and his/her responsible relatives must be counted, except income that is specifically excluded under Definition of Earned Income and Definition of Unearned Income". M240. The Definition of Unearned Income includes:

- (1) Income from benefit and pension programs, such as Social Security, Railroad Retirement, veterans' pensions or compensation payments, educational benefits to the veteran which are funded by the government, unemployment compensation, employer or individual private pension plans and annuities.

NOTE: Only VA compensation and educational benefits to the veteran which are funded by the government qualify for the \$20 unearned income disregard allowed in computing net income. No disregard is allowed on VA pension amounts.

M242

The list of exclusions from unearned income does not include VA disability benefits. The only reference to VA benefits in that section is as follows:

That portion of a benefit which is intended to cover the financial need of other individual(s) is not counted. It is counted as unearned income to the other individual(s). (Example: AABD-EP grants and augmented Title II and Department of Veterans Affairs (VA) benefits).

M242.2(18)

The regulation above specifically includes the petitioner's VA Compensation benefits as fully countable unearned income (less a \$20 disregard). Benefits would only be excluded to the extent that they covered another individual. No allegation has been made that this is the case here.

The VHAP regulations also specifically include "veteran's pension or compensation" benefits as countable unearned income W.A.M. 4001.81 (b). The only VA benefits that are excluded are "five percent of a VA monthly award that is retained by a guardian". W.A.M. 4001.81 (b). Again, there is no allegation that such an amount is retained by a guardian in this case.

The Department was correct to include the petitioner's husband's VA Compensation (less \$20) in its calculations. The fact that such benefits are not counted in other federal contexts or programs does not mean it is excluded from these low-income medical programs. The specific regulations of these programs must be followed and the Board must uphold the

Department when its actions are consistent with these regulations. 3 V.S.A. § 3091(d). The correct inclusion of this VA income made the couple's household income far in excess of Medicaid maximums for a couple (\$733 per month, See P-2420B(1))¹ and VHAP maximums (\$1,452 per month for a couple, See P-2420B(6)).

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¹ Even if the VA benefits were not counted, the petitioner and her husband would likely still be ineligible for Medicaid. The inclusion of the VA benefits affects the amount of the couple's spend-down. The case record shows that the petitioner and her husband were placed on spend-downs of \$2,935.99 each for Medicaid eligibility from the period of August 1, 2001 to January 31, 2002. This means that if they each incur bills equal to these amounts in the six- month period that can receive Medicaid assistance. If the petitioners are unaware of how a spend-down works they are urged to contact their caseworker to discuss potential benefits under this program.